IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Tian Bu
Serial Number:	10/762,391
Filed:	01/22/2004
Group Art Unit:	2457
Examiner:	Gold, Avi M.
Confirmation No.:	4485
Title:	NETWORK ARCHITECTURE AND RELATED METHODS FOR SURVIVING DENIAL OF SERVICE ATTACKS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests Pre-Appeal Brief Review of the rejections contained in the Final Office Action mailed on August 3, 2010.

The rejection of claim 22 under 35 U.S.C. §112 must be withdrawn.

The Examiner incorrectly contends that "using a first, second and third timing for probing nodes based on their ranking, along with a first, second and third interval between probes, with the second interval being longer than the first interval and the third interval being longer than the first interval" is not disclosed in the specification. Page 21, lines 11-19 of the description explains that nodes can be placed into bins and that the nodes in one bin 312(1) are probed at a first interval Δ, those in another bin 312(2) are probed every 2Δ and those in a third bin 312(3)

are probed every 4Δ. Overlay nodes in the bin 312(1) are probed more frequently than overlay nodes in bin 312(2) and overlay nodes in bin 312(2) are probed more frequently than overlay nodes in bin 312(3). Page 20, lines 27 – page 21, line 4, indicates that the bin 312(1) is a highest-ranked bin, the bin 312(2) is a next highest-ranked bin and the bin 312(3) is a next highest bin. Therefore, the language in claim 22 is fully supported by the description and the rejection must be withdrawn.

The rejection of claims 22 and 27 under 35 U.S.C. §102(e) must be withdrawn.

The Examiner incorrectly suggests that the *Bornstein* reference teaches ranking nodes with at least three different rankings and using three different intervals for probing the differently ranked nodes. The Examiner points to paragraphs [0038], [0043] and [0044] in this regard. Paragraph 38 of the *Bornstein* reference only teaches at most two top performing routes as alternates provided through a CDN edge server. Paragraph [0043] of the *Bornstein* reference only teaches using a direct route or indirect routing. Paragraph [0044] mentions three possible indirect routes but does not mention any type of probing or using different probing intervals for each. In fact, the time out for each attempt on each of the three routes is the same (one second).

Therefore, there is no *prima facie* case of anticipation. The *Bornstein* reference does not teach three different rankings and three different probing intervals as included in Applicant's claims 22 and 27. The rejection must be withdrawn.

The rejections under 35 U.S.C. §103 must be withdrawn.

There are several rejections based upon the *Bornstein* reference combined with other references. Each of those rejections must be withdrawn.

With regard to claims 23-25, the Examiner attempts to combine the *Bornstein* and *Corrigan* references. As discussed above, the *Bornstein* reference does not teach three different

rankings for nodes and three different probing intervals. It follows that even if the proposed combination could be made, the result is not enough to establish a *prima facie* case of obviousness.

With regard to the other claims, the Examiner proposes to combine the *Bornstein* and *Varadarajan* referenees. The Examiner eorrectly acknowledges that the *Bornstein* referenee does not teach using available bandwidth for ranking nodes. Instead, the *Bornstein* reference teaehes conducting races using ping data. Those races are scored based upon three measurements as described in paragraph [0042]. Nonc of thc three measurements mentioned in paragraph [0042] provides any information regarding available bandwidth.

It cannot be considered obvious to substitute in a bandwidth-based ranking for the ping data and race-based ranking of the *Bornstein* reference. That would involve changing the principle of operation of the *Bornstein* reference from one that relies upon the three measurements described in paragraph [0042] to a different principle of operation that depends upon bandwidth availability.

It follows that the proposed modifieation to the *Bornstein* reference by extracting bandwidth availability information from the *Varadarajan* reference cannot be made. Any proposed modification to a reference that would change its prineiple of operation cannot be made for purposes of attempting to manufacture a *prima facie* case of obviousness. MPEP 2143.01(VI) is instructive on this point. Aecording to the recent guideline updates regarding the obviousness inquiry, the proposed modification to the *Bornstein* reference does not inelude a predictable result because it changes how the *Bornstein* reference operates. Applicant respectfully submits that the rejections under 35 U.S.C. §103 that depends upon the base combination of the *Bornstein* and *Varadarajan* references must be withdrawn. Even if the

Examiner suggests adding a third reference, the base combination cannot be made and there is no *prima facie* case of obviousness.

Conclusion

Applicant respectfully submits that there is no *prima facie* case of anticipation or obviousness against any of Applicant's claims. All rejections must be withdrawn.

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